

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 SOLOMONA RICKY PATU,

11 Plaintiff,

12 v.

13 SHERYL ALBERT,

14 Defendant.

CASE NO. C15-0721JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court is *pro se* Plaintiff Solomona Ricky Patu's motion to reopen his  
17 case. (Mot. (Dkt. # 38).) Defendant Sheryl Albert, ARNP, opposes Mr. Patu's motion.  
18 (Resp. (Dkt. # 40).) For the reasons stated below, the court denies Mr. Patu's motion.

19 **II. BACKGROUND**

20 Mr. Patu filed a complaint asserting a cause of action under 42 U.S.C. § 1983.  
21 (Compl. (Dkt. # 8).) Specifically, Mr. Patu alleged that Ms. Albert, who was Mr. Patu's  
22 primary health care provider during Mr. Patu's period of confinement at the Monroe

1 Correctional Complex (“MCC”), violated Mr. Patu’s Eighth Amendment rights when she  
2 denied his request for Metamucil to treat his chronic constipation. (*See generally id.*)

3 On March 8, 2016, Magistrate Judge James P. Donohue issued a report and  
4 recommendation concluding that Ms. Albert’s motion for summary judgment (MSJ (Dkt.  
5 # 29)) should be granted and Mr. Patu’s complaint should be dismissed with prejudice  
6 (R&R (Dkt. # 32)). In so concluding, Magistrate Judge Donohue correctly noted that the  
7 Eighth Amendment standard requires proof that (1) the alleged wrongdoing was  
8 objectively “harmful enough” to establish a constitutional violation, and (2) the prison  
9 official acted with a sufficiently culpable state of mind. (*Id.* at 7 (citing *Farmer v.*  
10 *Brennan*, 511 U.S. 825, 834 (1994)).) The state of mind requirement under the second  
11 subjective component of the Eighth Amendment standard requires “deliberate  
12 indifference” on the part of the prison official to the inmate’s health or safety. (*Id.* (citing  
13 *Farmer*, 511 U.S. at 834).) Judge Donohue also explained that “[p]rison officials are  
14 deliberately indifferent to a prisoner’s medical needs when they deny, delay, or  
15 intentionally interfere with medical treatment.” (*Id.* (quoting *Hallet v. Morgan*, 296 F.3d  
16 732, 744 (9th Cir. 2002)).)

17 First, Magistrate Judge Donohue noted that there was no evidence to substantiate  
18 Mr. Patu’s claim that he had requested or was denied Metamucil on the date alleged in  
19 his complaint. (*Id.* at 8.) Next, Magistrate Judge Donohue concluded that Mr. Patu’s  
20 own statements demonstrated that the functioning of his bowels was within the normal  
21 range and objective medical evidence revealed no significant abnormalities that would  
22 support a diagnosis of chronic constipation. (*Id.*) Thus, Mr. Patu failed to demonstrate

1 that his alleged chronic constipation constituted a serious medical need. (*Id.*) Finally,  
2 Magistrate Judge Donohue concluded that Mr. Patu failed to establish that Ms. Albert  
3 was deliberately indifferent to Mr. Patu’s complaints of chronic constipation. (*Id.* at 8-9.)

4 Mr. Patu failed to file an objection to Magistrate Judge Donohue’s report and  
5 recommendation. (*See generally* Dkt.) Accordingly, on April 4, 2016, the court adopted  
6 Magistrate Judge Donohue’s report and recommendation, granted Ms. Albert’s motion  
7 for summary judgment, dismissed Mr. Patu’s complaint with prejudice, and entered  
8 judgment in Ms. Albert’s favor. (Ord. Adopting R&R (Dkt. # 36); Judgment (Dkt.  
9 # 37).) Mr. Patu did not appeal the court’s order or judgment. (*See generally* Dkt.)

10 On June 6, 2017, more than a year after the court entered judgment in Ms. Albert’s  
11 favor, Mr. Patu filed a motion to reopen his case. (Mot.) In his motion, Mr. Patu states  
12 that he is still experiencing chronic constipation, Ms. Albert is not answering his medical  
13 requests, and other prison nurses are forgetting to give him Metamucil. (*Id.* at 1.) The  
14 court liberally construes Mr. Patu’s motion as a motion for reconsideration or to vacate  
15 the judgment.<sup>1</sup> The court now considers Mr. Patu’s motion.

### 16 III. ANALYSIS

#### 17 A. Motion for Reconsideration

18 Pursuant to Local Civil Rule 7(h)(2), a motion for reconsideration “shall be filed  
19 within fourteen days after the order to which it relates is filed.” Local Rules W.D. Wash.  
20 LCR 7(h)(2). Because Mr. Patu’s motion was filed more than a year after the order to

---

21  
22 <sup>1</sup> “Courts in this circuit have an obligation to give a liberal construction to the filings of  
pro se litigants.” *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013).

1 which it relates, Mr. Patu's motion is untimely under the court's Local Rules. The court  
2 denies the motion on this ground.

3 Even if Mr. Patu's motion had been timely, however, Mr. Patu does not make any  
4 of the required showings to warrant reconsideration of the court's April 4, 2016, order or  
5 judgment. "Motions for reconsideration are disfavored," and the court "will ordinarily  
6 deny such motions in the absence of a showing of manifest error in the prior ruling or a  
7 showing of new facts or legal authority which could not have been brought to [the  
8 court's] attention earlier with reasonable diligence." Local Rules W.D. Wash. LCR  
9 7(h)(1). Mr. Patu's motion does not address—let alone show—manifest error in the  
10 court's prior ruling or new facts or legal authority that could not have been raised earlier.  
11 (*See generally* Mot.) Indeed, Mr. Patu's motion simply rehashes his previous claim. (*See*  
12 *id.*) Accordingly, the court denies Mr. Patu's motion for reconsideration.

### 13 **B. Motion to Vacate**

14 The court could also liberally construe Mr. Patu's motion as one to vacate the  
15 judgment under either Federal Rule of Civil Procedure 59(e) or 60(b). Rule 59(e)  
16 provides that a court may alter or amend a judgment. Fed. R. Civ. P. 59(e). Absent  
17 "other, highly unusual, circumstances," reconsideration pursuant to Rule 59(e) is  
18 appropriate only where (1) the court is presented with newly discovered evidence; (2) the  
19 court committed clear error or the initial decision was manifestly unjust; or (3) there is an  
20 intervening change in controlling law. *Sch. Dist. No. 1J, Multnomah Cnty. v. ACandS,*  
21 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Rule 60(b) allows a court to relieve a party from  
22 a final judgment, order, or proceeding for six reasons: (1) mistake, inadvertence,

1 surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud,  
2 misrepresentation, or other misconduct by the opposing party; (4) the judgment is void;  
3 (5) the judgment has been satisfied, released, or discharged; and (6) any other reason  
4 justifying relief. Fed. R. Civ. P. 60(b).

5 Motions under Rule 60 must be brought “within a reasonable time,” except for  
6 motions under reasons (1), (2), and (3), above, which must be brought “no more than one  
7 year after entry of the judgment or order or date of the proceeding.” Fed. R. Civ. P.  
8 60(c)(1). In addition, motions under Rule 59(e) must be brought within 28 days  
9 following entry of judgment. Fed. R. Civ. P. 59(e). Mr. Patu’s motion, which was  
10 brought more than one year following the court’s entry of judgment, is untimely with  
11 respect to these provisions. To the extent Mr. Patu’s motion can be liberally construed to  
12 be brought under any of these provisions, the court denies his motion as untimely.

13 Even if Mr. Patu’s motion were timely, he fails to identify a basis under either  
14 Rule 59(e) or Rule 60 for reconsidering the court’s order or vacating the judgment. As  
15 discussed above, Mr. Patu merely reiterates facts previously before the court or provides  
16 irrelevant or insufficient reasons for reopening his case. (*See generally* Mot.) The court  
17 therefore denies Mr. Patu’s request to reopen this matter.

18 //

19 //

20 //

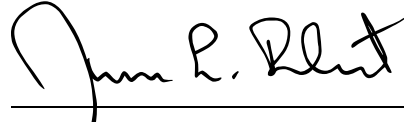
21 //

22

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court DENIES Mr. Patu's motion to reopen his case  
3 (Dkt. # 38).

4 Dated this 26th day of June, 2017.

5   
6

7 JAMES L. ROBART  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22